IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 389 of 2007()

CC.1046/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER: PETITIONER/ACCUSED

SAJEESH P.K, S/O.KESAVAN,AGED 36 YEARS,
PALLITHARA HOUSE,KAIPAMANGALAM, P.O CHALLINGAL,
THRISUR.

BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENTS: RESPONDENTS/RESPONDENTS

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM.

2. SRI RAM INVESTMENT LTD,IST FLOOR, ARAFA TOWER, VELIYANNUR ROAD, TRICHUR - 21. REPRESENTED BY ITS MANAGER.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 389 OF 2007

Dated this the 15th day of February, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the N.I. Act. This petition has been filed to quash the said prosecution invoking the powers under Sec.482 of the Cr.P.C.

2. What is the reason? The learned counsel for the petitioner submits that the cheque in question is issued in connection with a hire purchase transaction. Subsequent to the filing of the complaint, the said hire purchase transaction has been closed. The complainant had undertaken to withdraw the case. In these circumstances, the petitioner, who had earlier appeared before the learned Magistrate and was enlarged on bail, did not appear before the learned Magistrate. The complainant did not take proper steps to withdraw the prosecution or to report composition. The petitioner hence finds himself facing the unenviable predicament of a warrant of arrest issued by the learned Magistrate chasing him. It is, in these circumstances, that

the petitioner has come to this Court with a prayer that the proceedings initiated against him may be quashed. Alternatively, it is prayed that the learned Magistrate may be directed to release the petitioner on bail when he surrenders before the learned Magistrate. I do not find any reason which would justify the quashing of the proceedings. Even assuming that subsequently the disputes have been settled and the liability discharged, that is no reason to quash the proceedings if the offence alleged has been committed. Of course, the complainant can report composition or withdraw the complaint. The subsequent discharge of the liability cannot, at any rate, be reckoned as sufficient reason to quash the proceedings initiated under Sec.138 of the N.I. Act. That prayer cannot be accepted.

3. Coming to the latter alternate prayer, it is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the

same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge